

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

RICHARD J. BAXTER,

Plaintiff,

vs.

DARREN BRYCE,

Defendant.

CV 13-00083-GF-DWM-RKS

ORDER

On August 1, 2014, Defendant filed a motion for summary judgment. (Doc. 15.) A defendant filing a motion for summary judgment must file and serve the notice and warning required by *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998) “in a document separate from the motion and from the brief, at the time the defendant files and serves any motion for summary judgment against a plaintiff who is proceeding pro se and who is incarcerated or detained at any time before filing a response to the motion . . .”. This notice must be served concurrently with the motion for summary judgment. *Wood v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012).

Local Rule 56.2(b) provides that “Failure to provide the [required] Notice and Warning will result in denial of the motion for summary judgment, regardless

of whether the motion is fully briefed.” Defendant failed to provide the required notice and warning and therefore the motion must be denied.

Should Defendant provide the necessary Notice and Warning as required by the local rules, the Court would entertain a renewed motion.

It is **ORDERED:**

1. Defendant’s Motion for Summary Judgment (Doc. 15) is denied without prejudice and with leave to renew upon compliance with the notice requirement set forth in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) and Local Rule 56.2.
2. At all times during the pendency of this action, Mr. Baxter shall immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

DATED this 12<sup>th</sup> day of August, 2014.

/s/ Keith Strong  
Keith Strong  
United States Magistrate Judge